

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into this 26 day of, April, 2002 by and between the following ("the Parties") through their duly authorized representatives:

A. The United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services, (collectively "United States"); and the Medicaid Fraud Control Unit ("MFCU") of the Office of the Attorney General of the Commonwealth of Virginia ("Commonwealth of Virginia").

B. ServiceMaster Diversified Health Services, L.P. ("Diversified"), now known as BEP Services, L.P. ("BEP") and its current and former officers, directors, partners, employees, shareholders, subsidiaries, agents, representatives, predecessors, successors, assigns and affiliates, including but not limited to, BEP Services (Southern) L.L.C. ("Southern"), Forest Hill Holdings, L.L.C. ("FHH"), and Forest Hill Investors, L.L.C. ("FHI"), and DHS/Diversified Health Services, Inc. ("DHS") (collectively the "Diversified Affiliates").

II. PREAMBLE

A. WHEREAS, Chippenham Manor Nursing Home ("Chippenham Manor"), located at 7246 Forest Hill Avenue, Richmond, Virginia 23225, is a long-term care/skilled nursing facility owned by Chippenham Associates, L.P. ("Chippenham") engaged in the provision of health care services to Medicare and Medicaid beneficiaries and formerly was managed by Diversified from April 1, 1995 to December 21, 1999, whereupon the management agreement was terminated, and the management and financial/accounting services for

Chippenham Manor were fully transitioned to Richmond Management Associates, LLC ("Richmond"), by April 30, 2000.

B. WHEREAS, the United States and the Commonwealth of Virginia contend that the Diversified Affiliates, on behalf of Chippenham Manor, submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and the Medicaid Program ("Medicaid"), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

C. WHEREAS the United States and the Commonwealth of Virginia (collectively "the Governments") conducted an investigation of Chippenham Manor arising under the federal civil False Claims Act, 31 U.S.C. §§ 3729-3733 and Virginia civil Medicaid Fraud statutes, Virginia Code Annotated § 32.1 -312 and § 32.1 -313. As a result, the Governments contend that during a period from April 1, 1995 to April 30, 2000, they have certain civil claims (the "United States Claims" and "Virginia Claims") against the Diversified Affiliates for engaging in the following Covered Conduct, as defined below.

D. WHEREAS, the Covered Conduct is defined as the following:

(1) At certain times during the period from April 1, 1995 to April 30, 2000, certain patients at Chippenham Manor did not receive the services necessary to maintain their health and welfare, and this was both caused by, and known to, the Diversified Affiliates, through the acts of its agents and employees, including but not limited to, administrators, corporate nurses, and executive personnel charged with supervising clinical

services and with supervising corporate nurses. The failure to provide an adequate level of services manifested itself in risk of injuries to patients and actual injuries to patients, including, but not limited to: the acquiring and exacerbation of decubitus ulcers (bed sores); dehydration; significant weight loss; malnutrition; acquiring of systemic infections; and exacerbation of natural disease processes, some of which may have contributed to patient fatalities.

(2) The causes of the risk of injuries and actual injuries included but were not limited to: inadequate staff needed to deliver the necessary services; inadequate supplies; insufficient training of staff; inadequate protocols, and a failure to implement those protocols which were established to allow for patients to receive necessary care; failure to utilize preventative measures, timely intervention, and treatments as ordered; failure to insure adequate food and fluid intake; failure to seek timely medical intervention; improper medication administration and failure to take corrective actions to improve overall patient care.

(3) At certain times during the period beginning on or about April 1, 1995 through April 30, 2000, the Diversified Affiliates were aware of the resulting risk of, and actual injuries to, patients at Chippenham Manor as outlined above.

(4) The Diversified Affiliates, on behalf of Chippenham Manor, submitted claims for services to Medicare and Medicaid in disregard of the knowledge described in Paragraph D (3) above.

(5) The Diversified Affiliates submitted or caused to be submitted bills to the Medicare and Medicaid programs for the care, services, and supplies

described above, which were false in that they were for services which were not rendered, or were deficient, inadequate, substandard, and were of quality which failed to meet professionally recognized standards of health care, during the period April 1, 1995 to April 30, 2000.

E. WHEREAS, the United States also contends that it has certain administrative claims against BEP under the provisions for permissive exclusion from the Medicare, Medicaid, and other Federal health care programs, 42 U.S.C. § 1320a-7(b), and under the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

F. WHEREAS, the Diversified Affiliates deny each and every one of the allegations contained in Paragraph II C.-E. for the Covered Conduct, and further deny any alleged inadequacy of care, wrongdoing or liability to any resident of Chippenham Manor, and further deny any claims and allegations of the Governments relating to any claims submitted or caused to be submitted and/or payments received under the Medicare and Medicaid programs. This Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy or wrongdoing for the allegations contained in Paragraph II C.-E. for the Covered Conduct, by the Diversified Affiliates, and may not be used as evidence of such in any proceeding by either the Governments or any third party.

G. WHEREAS, the Parties further agree that execution of this Agreement will require the approval of the United States Bankruptcy Court for the Western District of Tennessee, Western Division ("Bankruptcy Court").

H. WHEREAS, in order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The Diversified Affiliates agree to pay the Settlement Amount of \$225,000 (Two hundred twenty-five thousand dollars) by wire transfer directly to the Chippenham Manor Escrow Fund, also known as the Chippenham Manor Disbursement Fund, without interest, pursuant to the following terms:

(a) Upon execution of the Agreement by all Parties and Bankruptcy Court approval; and

(b) Disbursement to BEP of sufficient funds from any one or all of the following sources to satisfy the \$ 225,000 Settlement Amount:

(1) Release of funds to BEP from the TruCare Escrow Agreement dated September 1, 2000 among Express Care, L.P., a Tennessee limited partnership ("Express"), TruCare Medical, Limited Partnership, a Florida limited partnership ("TruCare and Express are collectively referred to herein as the "TruCare Entities"), LTC Investment Limited Partnership,

a Delaware limited partnership ("LTCS") and Quarles & Brady LLC, as Escrow Agent (the "Escrow Agent");

(2) Release of funds to BEP from the Rehabilitation Escrow Agreement dated September 1, 2000 among DHS Rehabilitation Limited Partnership, a Florida limited partnership ("Rehabilitation"), LTCS Investment Limited Partnership, a Delaware limited partnership ("LTCS"), and Quarles & Brady, LLC, as escrow agent (the "Escrow Agent"); and/or

(3) Termination of the August 27, 2001 Settlement Agreement between the United States, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), and BEP Services, L.P. ("BEP"), formerly known as the "Pavilion Agreement"; and release of funds to BEP from the Pavilion Escrow Agreement dated September 1, 2000 among BEP Services, L.P., a Tennessee limited partnership f/k/a Service Master Diversified Health Services, L.P. ("DHS LP"), LTCS Investment Limited Partnership, a Delaware limited partnership and Quarles & Brady, LLC, as Escrow Agent (the "Escrow Agent").

(c) The Settlement Amount of \$ 225,000 shall be paid, according to (d) below, no later than ten (10) days after the Bankruptcy Court's Order approving the Settlement Agreement becomes a final order.

(d) Arrangements for the wire transfer(s) shall be made with Carolyn McElroy, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky, & Popeo, P.C. (202) 434-7408. The Chippenham Escrow Fund was previously created to benefit residents of Chippenham Manor,

and shall be used expressly for Chippenham Manor's payment of expenses associated with the federal monitors, quality of care improvements, approved capital expenditures, and other compliance provisions required by the United States and the Commonwealth of Virginia. This payment is not intended to and does not in any way lessen Chippenham Manor's own independent obligation to pay for such expenses pursuant to its own settlement with the United States. Within five (5) business days of receipt of any payment under this Agreement by the Chippenham Manor Disbursement Fund, Carolyn McElroy, Esquire shall confirm such receipt by written correspondence to Constance H. Frogale, Assistant United States Attorney, United States Attorney's Office, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, VA 22314, with a copy to Lewis Morris, Assistant Inspector General for Legal Affairs, Office of Inspector General, Room 5527, Cohen Building, 330 Independence Avenue, S.W., Washington, DC 20201.

(d) Upon payment of the Settlement Amount, the Diversified Affiliates have no further responsibilities with respect to the disbursement and /or use of such monies.

2. Subject to the exceptions in Paragraph 5 below, in consideration of the promises and obligations made by the Diversified Affiliates in this Agreement, and conditioned upon payment in full of the settlement amounts referenced in paragraph III A.1., the United States and the Commonwealth of Virginia, on behalf of the sovereigns, its officers, agents, agencies, and departments, agree to release and discharge the Diversified Affiliates from any and all civil and/or administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States and

the Commonwealth of Virginia may have against the Diversified Affiliates under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, Virginia's civil Medicaid Fraud statutes §§ 32.1-312 and 32.1-313 of the Code of Virginia, and related laws and regulations, and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for the United States Claims and Virginia Claims arising from or related to the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct, as of the Effective Date.

3. In consideration of the obligations of BEP set forth in this Agreement and the Integrity Provisions referred to in Paragraph 6, and conditioned upon BEP's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative claim or action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against BEP under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct, except as reserved in Paragraph 5, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude BEP from Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking

action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 5, below. No individuals are released by this Paragraph 3.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of the Diversified Affiliates set forth in this Agreement, and conditioned upon the Diversified Affiliates's payment in full of the Settlement Amount, the Commonwealth of Virginia agrees to release the Diversified Affiliates under Virginia's civil Medicaid Fraud statutes §§ 32.1-312 and 32.1-313 of the Code of Virginia, for the allegations contained in Paragraphs II C.-E. above, including those related to the Covered Conduct, as of the Effective Date.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including the Diversified Affiliates) are any and all of the following:

(1) Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement; and

(6) Any claims for personal injury or property damage or for other consequential damages arising from the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct.

6. BEP has entered into a previous Settlement Agreement with the United States, attached as Exhibit A and incorporated into this Agreement by reference, that includes certain Integrity Provisions (the "Integrity Provisions") set forth within Paragraphs 4.1 through 4.14 of Exhibit A. BEP shall continue to satisfy its obligations under the Integrity Provisions.

7. The Diversified Affiliates agree that this settlement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

8. The Diversified Affiliates fully and finally release the United States, the Commonwealth of Virginia, their agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Diversified Affiliates have asserted, could have asserted, or may assert in the future against the United States, the Commonwealth of Virginia, their agencies, employees, servants, and agents, related to the allegations contained in Paragraphs II C.-E. above, for the Covered

Conduct, as of the Effective Date, and the United States' and the Commonwealth of Virginia's investigation and prosecution thereof.

9. The Settlement Amount that the Diversified Affiliates must pay pursuant to Paragraph 1 of this Agreement, shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State Medicaid Program, related to the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct; and the Diversified Affiliates agree not to resubmit to any Medicare carrier or intermediary or any State Medicaid Program any previously denied claims related to the allegations contained in Paragraphs II C.-E. above, for the Covered Conduct, and agrees not to appeal any such denials of claims.

10. The Diversified Affiliates agree to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR), 48 C.F.R § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Diversified Affiliates, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) The Diversified Affiliates' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement,

(5) the payment the Diversified Affiliates make to the United States pursuant to this Agreement,

(6) the negotiation of, and obligations undertaken pursuant to the Integrity Provisions to: (i) retain a Monitor to perform reviews as described in the Integrity Provisions ; and (ii) prepare and submit reports to OIG-HHS, are unallowable costs on Government contracts and under the

Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program *

(FEHBP). (All costs described or set forth in this Paragraph 10 are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by the Diversified Affiliates, and the Diversified Affiliates shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such

unallowable costs through any cost report, cost statement, information statement, or payment request submitted by the Diversified Affiliates or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for

Payment: The Diversified Affiliates further agree that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the Diversified Affiliates or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. The Diversified Affiliates agrees that the United States, at a minimum, shall be entitled to recoup from the Diversified Affiliates any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the Diversified Affiliates or any of their subsidiaries on the effect of inclusion of unallowable costs

(as defined in this Paragraph) on the Diversified Affiliates or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

11. The Diversified Affiliates agree that they shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. The Diversified Affiliates waive any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

12. Each party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Eastern District of Virginia, except that disputes arising under the Integrity Provisions shall be resolved exclusively under the dispute resolution provisions in the Integrity Provisions.

14. This Agreement and the BEP Integrity Provisions incorporated by reference, constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only BEP and OIG-HHS must agree in writing to modification of the Integrity Provisions, pursuant to Paragraph 4.14 of the Integrity Provisions.

15. The undersigned individuals signing this Agreement represent and warrant that they are authorized to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

16. The Diversified Affiliates agree to coordinate the implementation of this Agreement with any further proceeding in any bankruptcy court. The Parties explicitly agree that any reorganization plan applicable to BEP, Diversified, Southern, FHH, FHI, and DHS (the "Debtors") shall allow and provide for the full implementation of this Agreement and shall in no way interfere with or impede its full and timely implementation. The Diversified Affiliates represent that the plan of reorganization will conform with the terms of this Agreement, and further agree that any future proposed plan of reorganization shall include and be consistent with the terms of this Agreement.

17. The Debtors agree to seek immediate Court approval of this Settlement Agreement, to include authority for, and disbursement to BEP, of monies to pay the Settlement Amount, via a motion pursuant to Fed. R. Bankr Pro. 9019.

18. The Effective Date of this Agreement shall be the later of: (i) the date of the last signatory's signing of a fully executed copy of the Agreement or (ii) the approval of this Agreement by the Bankruptcy Court. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original.

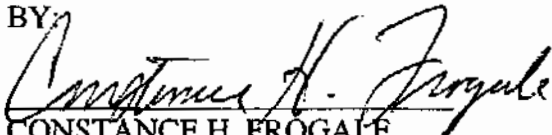
19. This Agreement is binding on successors, transferees, heirs, and assigns.

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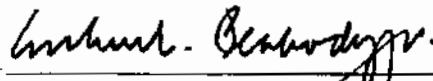
FOR THE UNITED STATES OF AMERICA:

PAUL J. McNULTY
UNITED STATES ATTORNEY

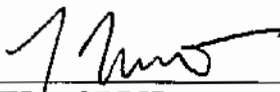
BY:


CONSTANCE H. FROGALE
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4/26/02
Date



ARTHUR E. PEABODY JR.
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4-26-02
Date

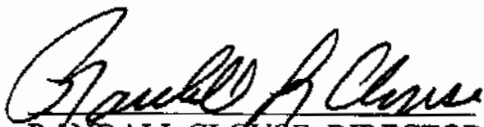

LEWIS MORRIS
ASSISTANT INSPECTOR GENERAL
OFFICE OF COUNSEL TO THE INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4/29/02
Date

FOR THE COMMONWEALTH OF VIRGINIA:


TRACEY D. STITH
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE VIRGINIA ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

4/29/02
Date


RANDALL CLOUSE, DIRECTOR
OFFICE OF THE VIRGINIA ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

4/29/02
Date

FOR THE DIVERSIFIED AFFILIATES

TOM DAVIS II

Date

Thomas C. Fox

4/29/02

THOMAS C. FOX

Date

SCOT T. HASSELMAN

ATTORNEYS FOR THE DIVERSIFIED AFFILIATES

JOHN L. RYDER

Date

BANKRUPTCY ATTORNEY FOR
DEBTORS IN THE CHAPTER 11 CASE
PENDING IN THE UNITED STATES
BANKRUPTCY COURT, WESTERN
DISTRICT OF TENNESSEE, WESTERN
DIVISION

FOR THE DIVERSIFIED AFFILIATES



TOM DAVIS II

April 30, 2002
Date

THOMAS C. FOX
SCOT T. HASSELMAN
ATTORNEYS FOR THE DIVERSIFIED AFFILIATES

Date

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Date

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TOM DAVIS II

Date

THOMAS C. FOX

Date

SCOT T. HASSELMAN

ATTORNEYS FOR THE DIVERSIFIED AFFILIATES



JOHN L. RYDER

4/29/02
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DISTRICT OF TENNESSEE, WESTERN
DIVISION